IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7992 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PARADIPBHAI MANHARBHAI POPAT

Versus

DIST MAGISTRATE

Appearance:

MR YOGESH S LAKHANI for Petitioner

Mr S K Patel, AGP for Respondent No. 1, 4

MS PJ DAVAWALA for Respondent No. 3

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 14/09/2000

ORAL JUDGEMENT

The petitioner has filed the present petition under Article 226 of the Constitution of India challenging the order of detention passed on 2.7.2000 by

the District Magistrate, Rajkot in exercise of powers conferred on him under Section 3(2) of the Prevention of Black Marketing and Maintenance of Supplied of Essential Commodities Act, 1980.

2. The petitioner has challenged the said order of detention on various grounds and one of the grounds taken up by the petitioner is that the document relied upon by the detaining authority for the purpose of detention was not supplied and, therefore, the petitioner was deprived of his valuable right at least to know the reasons and grounds of detention. Therefore, the order of detention according to the case of the petitioner is illegal and is required to be quashed and set aside.

3. Rule was issued to and served upon the respondents. Mr S K Patel, learned AGP appears for the respondents. Mrs P J Davawala, learned Addl. Standing Counsel appears for Union of India. I have heard the learned Advocates for the parties and have perused the papers.

4. Learned Advocate for the petitioner has argued that the detaining authority has stated at page 15 that at the time of inspection, a rough register was seized and there were entries with respect to purchase of blue kerosene. That the petitioner brought the said blue kerosene and thereafter it was converted into white kerosene and sold accordingly. Learned Advocate for the petitioner states that copy of this rough register was not supplied to the petitioner. The District Magistrate has filed affidavit and there it has been stated that the said document has not been considered by him for the purpose of detention of the petitioner. It is not possible to accept such a contention of the District Magistrate that the said document was not considered. The aforesaid orders make it clear that the said document was considered by the District Magistrate for detaining the petitioner. It therefore, cannot be said that the said document was not considered and the point is required to be upheld in favour of the petitioner. It is not in dispute that the said document or copy thereof was not supplied. Non-supply of the document relevant for the purpose of detention has to be treated to be an action depriving the petitioner of his valuable right to make effective representation against his detention. In the present case also, the impugned order of detention suffers from the aforesaid illegality and infirmity. The petitioner has been deprived of his valuable right of making effective representation under Article 22(5) of the Constitution of India. Therefore, further detention

of the petitioner cannot be upheld.

5. In view of the aforesaid, this petition is allowed. The impugned order of detention dated 2.7.2000 passed by the District Magistrate, Rajkot is quashed and set aside. The detenu is directed to be released forthwith, if not required in any other case.

Rule is made absolute accordingly. No order as to costs.

14.9.2000 [D P Buch, J.]
msp.